

ENTERED

November 26, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA

VS.

SAMUEL GONZALEZ

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CRIMINAL ACTION NO. 5:18-CR-482

ORDER

On July 3, 2018, Defendant was indicted for distribution, receipt, and possession of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2)(B), (a)(5)(B), (b)(1), (b)(2). (Dkt. No. 17 at 2–3). On August 13, 2018, Defendant filed a Motion to Suppress (Dkt. No. 22), arguing that the good-faith reliance on a warrant exception does not apply because of material omissions or misstatements in the warrant application, that probable cause did not exist to support the warrant, and any evidence in the warrant application that might give rise to probable cause was stale at the time the application was filed. Defendant also requested a *Frank v. Delaware* hearing concerning the alleged intentionally or recklessly omitted material facts. (Dkt. No. 22 at 27–29).

United States Magistrate Judge Sam Sheldon conducted an evidentiary hearing on October 22, 2018. After consideration of the matter, the Magistrate Judge made findings, conclusions, and a recommendation in this case. (Dkt. No. 35). The Magistrate Judge concluded that law enforcement relied on the warrant in good faith and that there was probable cause to support the warrant application. (*Id.* at 5–12). The Magistrate Judge further concluded that evidence establishing probable cause was not stale at the time of the application for or execution of the warrant. (*Id.* at 12–

14). Moreover, the Magistrate Judge held that the suppression hearing effectively doubled as a *Franks* hearing and found that none of the alleged false statements or omissions were material or intended to mislead the Magistrate Judge who authorized the warrant. (*Id.* at 14–16).

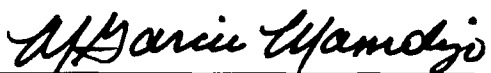
When a party objects to a magistrate's report, the district court is required to conduct a *de novo* review of those portions of the report to which a party has specifically objected. See 28 U.S.C. § 636(b)(1)(C). As to the other portions of the report, the district court determines whether they are clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Here, Defendant filed objections to the Report and Recommendation. (Dkt. No. 41). The Court, therefore, reviews the objected portions of the Report and Recommendation *de novo*. After reviewing the entire record—including the Motion to Suppress, the suppression hearing, the Report and Recommendation, the objections, and the relevant authorities in accordance with 28 U.S.C. § 636(b)(1), the Court agrees with the Magistrate Judge's findings and recommendation.

Accordingly, the Court hereby **ADOPTS** the Magistrate Judge's Report and Recommendation without change (Dkt. No. 35). Defendant's Motion to Suppress (Dkt. No. 22) is **DENIED** and the objections to the Report and Recommendation (Dkt. No. 41) are **OVERRULED**.

It is so **ORDERED**.

SIGNED November 26, 2018.



Marina Garcia Marmolejo
United States District Judge